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09/521,442	03/07/2000	Gopinathan K. Menon	680.0035USU	1007
7590 02/09/2007 Charles NJ Ruggiero Esq Ohlandt Greeley Ruggiero & Perle One Landmark Square 9th Floor Stamford, CT 06901-2682			EXAMINER VENKAT, JYOTHSNA A	
			ART UNIT	PAPER NUMBER
			1615	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/521,442
Filing Date: March 07, 2000
Appellant(s): MENON, GOPINATHAN K.

Charles N. J. Ruggiero
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/6/06 appealing from the Office action mailed 1/4/06 and 6/6/06.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Avram, cellulite: A Review of its Physiology and Treatment, J. Cosmetic & Laser Therapy, Volume 6, 2004, abstract

Van Vliet, An Assessment of Traditional and Novel Therapies for Cellulite, J. Cosmetic & Laser Therapy, Volume 7, 2005, abstract

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 36-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims are drawn to method of ameliorating or treating cellulite comprising topically applying perilla oil. There is no etiology for the treatment of cellulite. See the abstract by Avaram Mathew. Applicant's attention is drawn to the last sentence, which states, "There are no truly effective treatment for cellulite". This article is published after the filing date of the instant application. See also the abstract by Van Villet, which states, "There is no consensus as to the etiology of cellulite". **Both the articles, which are after the filing date of the application** and it is the position of the examiner that the claims fail to comply with 35 U. S. C. 112, first paragraph.

(10) Response to Argument

Appellant points out to specification at page 1, lines 10-13 and to page 4 and examples 1-2 and argues that the specification discloses and enables the claimed invention. Appellant argues that the articles submitted by examiner are misplaced and submits 20 patents and argues that examiner's assertion that there is no etiology for the treatment of cellulite is erroneous. Appellant also argues that the statements of Dr. Peter Elias in his declaration shows enablement including

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showing of nexus between the formation of cellulite and the up regulation of PPAR gamma receptors.

In response, examiner submitted two abstracts, which are after the filing date of the instant application to show that that there is no consensus on the etiology of cellulite and there are no effective treatments for cellulite. There is unpredictability in treating cellulite even after the filing date of the instant application.

Dr. Elias in his declaration states that he has over 30 publications during the past 10 years that focused on the effects of PPAR activators in skin biology and he also states “ *I am not aware that PPAR gamma stabilizers have been employed to treat cellulite in the skin biology or dermatology art outside of the disclosure in the above-captioned application*”.

It is the position of the examiner that based upon the above statement it is reasonable to conclude that PPAR stabilization cannot be equated to treating cellulite since the statement is from an expert in PPAR activators.

It is also the position of the examiner that there is no nexus between the *in vitro* results and *in vivo* effect. Claims are drawn to:

A method of ameliorating or treating cellulite, comprising topically applying perilla oil to an area of skin affected by cellulite in an amount effective to improve the aesthetic appearance thereof.

Treating or ameliorating generally means, “to reduce the symptoms”. Applicant would urge that “improve the aesthetic appearance thereof” constitutes treating or ameliorating. But it does not appear that making the cellulite look better actually reduces the symptoms-it is akin to putting makeup on a pimple. The aesthetic appearance is improved, however, the symptoms remain. Therefore, claims do not comply with 35 USC §112, first paragraph.

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(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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